

House Study Bill 168 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON BALTIMORE)

A BILL FOR

1 An Act relating to notice of garnishment and levy to a judgment
2 debtor.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 626.50, Code 2015, is amended to read as
2 follows:

3 **626.50 Duty to levy — notice of ownership or exemption —**
4 **notice to defendant.**

5 1. An officer is bound to levy an execution on any personal
6 property in the possession of, or that the officer has reason
7 to believe belongs to, the defendant, or on which the plaintiff
8 directs the officer to levy, after having received written
9 instructions for the levy from the plaintiff or the attorney
10 who had the execution issued to the sheriff, unless the officer
11 has received notice in writing under oath from some other
12 person, or that person's agent or attorney, that the property
13 belongs to the person, stating the nature of the person's
14 interests in the property, how and from whom the person
15 acquired the property, and the consideration paid for the
16 property; or from the defendant, that the property is exempt
17 from execution.

18 2. a. The officer making the levy in subsection 1 shall
19 promptly serve written notice of the levy on the defendant.
20 The notice shall be served in the same manner as provided for
21 original notice.

22 b. This ~~section~~ subsection is not applicable to garnishment
23 proceedings.

24 Sec. 2. Section 642.5, subsection 2, Code 2015, is amended
25 to read as follows:

26 2. The sheriff shall ~~append~~ file the answers to the
27 examination to the sheriff's return within seven business days
28 of receiving the answers.

29 Sec. 3. Section 642.14, Code 2015, is amended to read as
30 follows:

31 **642.14 Notice of garnishment proceedings.**

32 Judgment against the garnishee shall not be entered until
33 notice as required by section 642.14A or 642.14B has been
34 served upon the defendant in the main action ~~has had ten days'~~
35 ~~notice of the garnishment proceedings, to be served in the~~

1 ~~same manner as original notices. However, if the garnishment~~
2 ~~is to earnings owed such defendant by the garnishee, judgment~~
3 ~~may be entered if notice to the defendant is served with the~~
4 ~~notice of garnishment to the garnishee who shall deliver the~~
5 ~~notice to the defendant with the remainder of or in lieu of the~~
6 ~~defendant's earnings. The garnishee shall state in answer to~~
7 ~~the service of notice of garnishment whether or not service of~~
8 ~~notice was delivered to the defendant.~~

9 ~~The notice required by this section shall contain the full~~
10 ~~text of section 630.3A.~~

11 Sec. 4. Section 642.14A, Code 2015, is amended to read as
12 follows:

13 **642.14A Notice of garnishment and levy to defendant —**
14 **non-employer garnishees.**

15 1. Within seven If the garnishment is to property other than
16 earnings an employer owes a defendant, the judgment creditor,
17 personally or through an agent or attorney, shall serve upon a
18 debtor who is a natural person not later than ten business days
19 after execution is served upon a garnishee, the sheriff shall
20 send the sheriff's filing of a garnishee's answers pursuant
21 to section 642.5, subsection 2, which show that the garnishee
22 is indebted to the defendant, a notice of garnishment and
23 levy to the defendant in the main action informing notifying
24 the defendant that certain real and personal property of the
25 defendant may be exempt from execution or garnishment and that
26 a hearing process is available for the defendant to claim such
27 exemptions of the information required in subsection 3.

28 2. The notice required by this section shall be served by
29 personal service or restricted certified mail and first class
30 mail to the last known address of the defendant and to the
31 defendant's attorney. The judgment creditor shall provide the
32 sheriff with the last known address of the defendant and the
33 defendant's attorney if there is an attorney of record. Proof
34 of mailing or personal such service by the sheriff shall be by
35 affidavit filed with the court.

1 3. The notice required by this section shall:

2 a. Inform the defendant that judgment has been entered in
3 the main action and the defendant's funds or other property is
4 subject to execution under the judgment.

5 b. Inform the defendant that the defendant has the right
6 to claim funds or other property exempt from execution or
7 garnishment and a right to ~~be timely heard on those claims~~
8 request and have a timely hearing before a judge to claim such
9 exemptions.

10 c. Inform the defendant that if the defendant does not file
11 a motion or other appropriate pleading to claim funds or other
12 property exempt from execution or garnishment under state or
13 federal law, the defendant may lose any such rights and the
14 funds or other property may be applied to the judgment against
15 the defendant.

16 d. Inform the defendant that state and federal laws may
17 place limits on the amount of earnings that may be garnished
18 annually and per pay period and limits on other funds and
19 property that may be garnished or levied against.

20 e. Contain the full text of section 630.3A.

21 f. State that the defendant may wish to consult a lawyer for
22 advice as to the meaning of the notice.

23 4. An additional court filing fee shall not be assessed for
24 proceedings under this section.

25 **Sec. 5. NEW SECTION. 642.14B Notice to defendant —**
26 **employer garnishees.**

27 If the garnishment is to earnings an employer owes a
28 defendant, the employer shall deliver the notice of garnishment
29 to the defendant with the remainder of or in lieu of the
30 defendant's earnings. The garnishee shall state in answer to
31 the sheriff's examination whether or not service of the notice
32 of garnishment was delivered to the defendant. The notice
33 required by this section shall contain the information required
34 by section 642.14A, subsection 3, and shall be delivered by
35 personal service, mail, or electronic means.

1 notice required by Code section 642.14A is served on the
2 judgment debtor. The bill provides that, under Code section
3 642.14A, instead of the sheriff sending notice of garnishment
4 and levy within seven days after execution, the judgment
5 creditor shall serve a natural person debtor with notice of
6 garnishment and levy not later than 10 business days after
7 the sheriff's filing of the garnishee's answers. The bill
8 eliminates the requirement that the judgment debtor's attorney
9 receive a copy of the notice.

10 Under current Code section 642.14, judgment against an
11 employer garnishee may be entered if the employer delivers
12 the notice of garnishment to the judgment debtor with the
13 remainder of or in lieu of the judgment debtor's earnings.
14 The bill moves this requirement to new Code section 642.14B
15 to more clearly distinguish the requirements of employer
16 and non-employer garnishees. The bill requires an employer
17 garnishee to provide the information currently required by Code
18 section 642.14A(3) to the judgment debtor.

19 The bill provides that a sheriff's actions under Code
20 chapter 642 shall not be construed to be that of an agent of any
21 person or party in the garnishment proceedings.